

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 UNITED STATES OF AMERICA,

Case No.: 2:16-cr-00285-APG-NJK

4 Plaintiff

**Order Denying Motion to Vacate Sentence**

5 v.

[ECF No. 277]

6 BRANDON LAMAR PRUITT,

7 Defendant

8 Over the course of two jury trials, Brandon Lamar Pruitt was convicted of sex trafficking  
9 a minor, transporting a minor for prostitution, being a felon in possession of a firearm, and  
10 witness tampering. ECF Nos. 136; 192; 276. He is currently serving a 300-month sentence. ECF  
11 No. 276. Pruitt appealed his convictions and sentence. The Ninth Circuit affirmed on all  
12 grounds with a limited remand for the parties to consider Pruitt's sentencing enhancement and to  
13 conform the written judgment to the oral sentence. *United States v. Pruitt*, 839 F. App'x 90, 95  
14 (9th Cir. 2020). Pruitt subsequently filed a petition for a writ of certiorari in the Supreme Court  
15 of the United States, which was denied. *Pruitt v. United States*, 142 S. Ct. 503 (2021).

16 Pruitt then moved under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence.  
17 ECF No. 277. He claimed his counsel was ineffective and his conviction for unlawful  
18 possession of a firearm was unconstitutional. I denied all but two of Pruitt's claims, appointed  
19 Pruitt counsel, and granted an evidentiary hearing on his claims that: (1) his counsel did not  
20 explain the sentencing consequences of Pruitt's options nor the elements of the crimes for which  
21 he was charged, and (2) his counsel did not engage in sufficient plea negotiations between trials.  
22 ECF No. 296. At the evidentiary hearing, one of Pruitt's lawyers (Heidi Ojeda) and one of the  
23 Government's then-prosecutors (Elham Roohani) testified; Pruitt declined to testify. After

1 considering the testimony and evidence presented at that hearing, I find that Pruitt has not  
2 sustained his burden of showing that his counsel was ineffective and that he suffered prejudice as  
3 a result.

4 **A. The *Strickland* standard for ineffective assistance of counsel is highly deferential.**

5 To prevail on a claim of ineffective assistance of counsel, Pruitt must show both that his  
6 counsel's performance was deficient, and that this deficient performance prejudiced him.  
7 *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's performance is deficient when it  
8 falls "below an objective standard of reasonableness." *Garza v. Idaho*, 586 U.S. 232, 237 (2019)  
9 (quotation omitted). I must apply a "strong presumption that counsel's conduct falls within the  
10 wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689. Pruitt bears the  
11 burden of showing that his "counsel made errors so serious that counsel was not functioning as  
12 the counsel guaranteed the defendant by the Sixth Amendment." *Harrington v. Richter*, 562 U.S.  
13 86, 104 (2011) (quotation omitted). This standard "is a most deferential one" because "the  
14 attorney observed the relevant proceedings, knew of materials outside the record, and interacted  
15 with the client, with opposing counsel, and with the judge." *Id.* at 105.

16 To establish prejudice, it is not enough for Pruitt "to show that the errors had some  
17 conceivable effect on the outcome of the proceeding." *Strickland*, 466 U.S. at 693. Rather, he  
18 must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the  
19 result of the proceeding would have been different," where "[a] reasonable probability is a  
20 probability sufficient to undermine confidence in the outcome." *Id.* at 694. To establish  
21 prejudice by having to stand trial instead of taking a plea offer, Pruitt must show that "there is a  
22 reasonable probability" that a plea offer would have been agreed to by the parties, accepted by  
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1 the court, and resulted in a sentence less severe than what was imposed. *Lafler v. Cooper*, 566  
2 U.S. 156, 164 (2012).

3 **B. Pruitt fails to establish either prong of the *Strickland* standard.**

4 Pruitt claims his counsel was ineffective because she failed to explain the elements of the  
5 offenses the Government had to prove and the different sentences he faced if he accepted a plea  
6 deal, pleaded straight up, or went to trial. ECF No. 286 at 14, 29, 30. Before the hearing, Ms.  
7 Ojeda submitted a declaration that, while she “does not recall the exact substance of every  
8 conversation with Mr. Pruitt[, she] informs every client of the possible consequences of going to  
9 trial (and losing) and reviews the elements of each offense with them (especially if going to  
10 trial).” ECF No. 291-1 at 4. She also “recalls having several conversations with Mr. Pruitt  
11 concerning the challenges of taking his case to trial” and that he “was resolved in wanting to take  
12 his case to trial.” *Id.* She testified similarly at the evidentiary hearing and stated that she spent  
13 considerable time with Pruitt before both trials. Pruitt did not want to plead guilty to any charge  
14 that would require him to register as a sex offender. No evidence or testimony rebutted this.

15 Pruitt also claims that after his first trial, his counsel did not discuss with him the ability  
16 to seek a new plea offer from the Government, and that if he had known the elements of the  
17 offense and his “sentencing exposure,” he “would have accepted the [Government’s] 22-year  
18 plea stipulation.” ECF No. 286 at 30. Again, nothing rebutted Ms. Ojeda’s declaration that she  
19 reviews the elements of the charges with all of her clients, and Pruitt is no exception. ECF No.  
20 291-1 at 4. And certainly by the time of his second trial, Pruitt would have known the elements  
21 of the offenses because he sat through his first trial on those charges. He cannot have been  
22 mistaken about the elements or the strength of the Government’s case by the time of the second  
23 trial.

1 Both Ms. Ojeda and Ms. Roohani testified that they discussed the possibility of a new  
2 plea agreement after the first trial, but they were unable to reach an accord. Both Pruitt and the  
3 Government were emboldened by the results of the first trial. Pruitt believed that the hung jury  
4 would convince the Government to offer a better (or at least the prior) plea deal. To the contrary,  
5 the Government believed its case would be stronger on retrial because it would be able to present  
6 an expert who was unavailable at the first trial. Ms. Roohani testified that the Government  
7 would not agree to anything less than having Pruitt plead to all charges and agree to a 25-year  
8 sentence. Particularly, the Government insisted that Pruitt plead guilty to charges that would  
9 require him to register as a sex offender. Ms. Ojeda testified Pruitt would never agree to that.

10 Pruitt suggests his counsel should have pressed the Government harder for a better plea  
11 deal. I disagree, given the futility of such an effort. But even if true, that would not meet the  
12 *Strickland* standard. *Aguilar v. Alexander*, 125 F.3d 815, 820-21 (9th Cir. 1997) (holding that  
13 attorney was not deficient in failing to adopt a more aggressive negotiation style because the  
14 attorney sought plea negotiations, was rejected, then proceeded to trial). And regardless, the  
15 testimony presented at the hearing proves that the Government would never have made an offer  
16 acceptable to Pruitt, regardless of how strenuously Ms. Ojeda lobbied for it. Pruitt's counsel's  
17 performance did not fall below the *Strickland* standard.

18 Even if counsel's performance could be deemed deficient, Pruitt suffered no prejudice  
19 because of that. Again, Pruitt would have known the elements of the offenses by the time of his  
20 second trial because he sat through the first trial on those charges. Likewise, Pruitt suffered no  
21 prejudice with regard to plea negotiations because regardless of how hard Ms. Ojeda tried, the  
22 Government refused to offer a deal below a 25-year sentence and the requirement that Pruitt  
23 plead to a crime requiring him to register as a sex offender. Pruitt would never agree to that so

1 no plea deal was possible. Therefore, Pruitt suffered no prejudice even if his allegations are true.  
2 *Lafler*, 566 U.S. at 163-164 (To establish prejudice by having to stand trial instead of taking a  
3 plea offer, the defendant must show “a reasonable probability that [a] plea offer would have been  
4 presented to the court . . .”).

5 Because Pruitt has failed to establish either element of the *Strickland* standard, let alone  
6 both, I must deny his motion.

7 I THEREFORE ORDER that Pruitt’s motion to vacate his sentence **(ECF No. 277)** is  
8 **denied.**

9 DATED this 8th day of August, 2025.

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ANDREW P. GORDON  
CHIEF UNITED STATES DISTRICT JUDGE  
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